

**DRAFT - NEPA Forecast Report**  
**January 25, 2017**

**APPROACHING DEADLINES (NEXT 2 WEEKS)**

**HEADQUARTERS REVIEWS**

**HQ/DOS/Supplemental DEIS/Line 67 (expected February):**

- **Description:** The proposal is an expansion of an existing pipeline to transport an additional 390,000 bpd of heavy oil sands crude from Alberta, Canada to Superior, WI. This proposal is complicated by interconnections with the adjacent Line 3 that allow Enbridge to transport up to the expanded capacity without approval.
- **Status:** OFA has received the latest version of the preliminary Supplemental DEIS. In this version, DOS has provided additional detail regarding transport and displacement scenarios to consider how the combined usage of Lines 67 and 3 would affect greenhouse gas emissions in the cumulative impacts section of the document.
- **Way forward:** OFA is working on a draft comment letter in anticipation of receiving the Supplemental EIS in the near future.

**PROGRAM ISSUES**

Nothing to report

**ELEVATED VISIBILITY**

Nothing to report

**ANTICIPATED ADVERSE RATINGS**

**R8/USFS/Supplemental DEIS/Hunter/Monument No. 1 Reservoir Expansion (Pre-Supplemental DEIS expected late Feb. 2017):**

- **Description:** The supplemental DEIS evaluates a special-use authorization to reconstruct and enlarge Hunter Reservoir and also includes the enlargement of Monument No. 1 on the Grand Mesa National Forest near Colbran, CO. The 2007 DEIS proposed the Hunter Reservoir expansion only, and was assigned an adverse rating due to impacts to a 32-acre high quality montane peat/fen wetland complex and lack of a range of alternatives. EPA reiterated concerns with the proposed project in scoping comments sent in February 2016, especially in light of the addition of Monument No. 1 and increased future water needs projected by the project proponent. Over the next 30 years, demand is projected to increase by two and a half times the current amount of 14,300 acre-feet, and the reservoir storage is for periods of drought.
- **Rating:** The 2007 DEIS was rated as "EU-3."
- **Concerns:** EPA's main concerns are for the potentially environmental unsatisfactory impacts to the fen/montane wetland complex and the habitat it provides from Hunter plus Monument No.1. EPA is also concerned about the lack of consideration of other reasonable, less damaging alternatives that would meet the water capacity needs with

reduced adverse impacts.

- **Status:** Region 8 has been working with the USFS and COE since 2004 on this project. After the 2007 Adverse Rating, formal negotiations lead to the COE identifying Monument No. 1 as the LEDPA. Now that Ute Water has increased its projection of future water needs, they claim they must include both Monument No. 1 and Hunter as the proposed action. We are awaiting information on proposed mitigation measures.
- **Way Forward:** Region 8 expects to receive the internal pre-supplemental DEIS for review in Late Feb. 2017. We would like to resolve any outstanding issues, including discussing potentially less damaging alternatives, before the supplemental DEIS is published in the Federal Register.

#### **R9/USFS/ROD/ Rosemont Mine:**

- **Description:** The EIS is for a proposed new, open-pit copper and molybdenum 4800 acre mine to be constructed mostly on USFS National Forest Land southwest of Tucson. If the Rosemont Mine is brought into production, it would be one of the largest U.S. copper mines.
- **Rating:** EPA rated the draft EIS as "EU-3" (Environmentally Unsatisfactory – Inadequate Information),
- **Concerns:** The major concerns outlined in our Draft EIS comment letter are water quality, quantity and habitat (wetlands) ARNI designations (Davidson Canyon Wash and Cienega Creek), impacts to air quality. In the comment letter on the DEIS, EPA cited the Project's potential impacts on air quality, ARNI (Davidson Canyon Wash and Cienega Creek), water quantity, quality, and habitat, tribal and cultural resources, biological resources, and human health. Upon review of the FEIS, EPA determined that the issues underlying its "environmentally unsatisfactory" rating had not been resolved; therefore, in December 2013, pursuant to its CAA Section 309 mandate, EPA notified the USFS and CEQ that the Project remains a candidate for referral. EPA requested, and the USFS granted, an extension of the referral deadline until a to-be-determined date. The extension was intended to allow time for an interagency process to seek resolution of the outstanding issues and avoid the need for referral, and for the Corps Section 404 permit decision to inform any referral decision. Since late 2013, CEQ has been facilitating interagency discussions toward this end.
- **Status:** On December 28, 2016, the Corps sent a letter to the applicant to signal the Corps intent to not authorize a 404 permit for the current proposal. The key factors identified by the District that support a permit denial are determinations that the proposed Rosemont Mine will cause or contribute to violations of state water quality standards, significant degradation of waters of the US and degradation, and that the proposed minimization and mitigation measures were inadequate. In addition, the Corps concluded that implementation of the proposed project would be contrary to the public interest due to concerns there are adverse effects to cultural resources and traditional cultural properties important to tribes.

**Commented [SE1]:** Water quality and related biological resources are the biggest drivers.

#### **HEADQUARTERS INTERESTS**

**Strategic Discussion with the USACE on the NEPA process:** The refusal of the Corps to share EAs for review and make them available for public disclosure is a widespread issue that triggers strategic implications. We are reaching out to regions to provide additional examples of Corps projects where there was a lack of collaboration and transparency in the NEPA process of projects that have potentially significant environmental impacts.

**HQ/Implementation of FAST-41:** The Guidance is complete following much discussion. It is scheduled to be issued in early 2017 and issued as a circular in 2018. Further, all agencies have received the Draft Report on Recommended Best Practices for review. The statute requires the Council issue the Final Report. Upon publication of the Final Report, all agencies with authority to delegate permitting authority, which includes EPA, must begin a “national process, with public participation”. Then, by December 2017, as appropriate, EPA will make model recommendations for State modification of permit programs for consideration of best practices.

**NEPA Compliance for NRDA Projects:** We need to discuss the potential for a conflict of interest when we are completing our NEPA 309 review of NRDA projects where we are not the lead agency, considering we are made an action agency through the signing of the ROD. We would like to create a plan for collaboration should a case arise where our comments on the preliminary drafts have not been addressed and we have significant issues with the document when the DEIS is made public. Projects and documents have been coming in from the Trustee agencies and OW is working on a collaboration process plan for OFA to review. We would like to have a meeting after the document is complete with OW and the regions to ensure meaningful collaboration and communication on the NEPA documents for the NRDA restoration plans and projects.

## **REGIONAL INTERESTS**

Nothing to Report

## **CONTINUING MEDIA/LITIGATION/OTHER INTEREST**

**R8/BLM/Post DEIS/Enfit Utility Corridor Project:** The EIS evaluates 5 proposed utility right-of-ways across BLM land in the Uintah Basin to supply and deliver product from a proposed oil shale project on private/state lands. The utility project is receiving a lot of public scrutiny because of the proposed mining operation. EPA provided comments on the DEIS on July 15, 2016. EPA rated the preferred alternative a “3” due to a lack of quantitative analysis of the environmental impacts of the oil shale project and requested the development of a supplemental EIS to address these concerns. Region 8 is currently collaborating with the BLM field office to address the issues raised in our comment letter.

**R1,2/EPA/Supplemental FEIS/Eastern Long Island Sound Dredged Material Disposal Site Designation:** On August 4, 2016, the Governor of NY sent a letter opposing the designation of an ocean dumping site in Eastern Long Island Sound and stating his intent to initiate legal action against EPA challenging any final rule designating permanent disposal sites in Eastern Long Island Sound. NY has objected under CZMA to a site being designated. R1 has posted a pre-publication of the Final Rule and associated FSEIS for the Eastern Long Island Sound

Designation on EPA Region 1's public website. In addition, they have responded to NY's CZMA objection. The Final Rule and FSEIS was published in the FR on 12/6/16 and will take effect on 1/5/17. On December 6, 2016, New York State Department of State and Department of Environmental Conservation issued a 60-day notice of intent to sue under the Marine Protection, Research, and Sanctuaries Act (MPRSA) which ends on February 6, 2017. NYS alleges that EPA violated the site designation criteria in Title I of MPRSA.

**R4/ NOAA (we are a trustee and will sign the ROD)/ Deepwater Horizon Oil Spill Draft Restoration Plan I and EIS: Provide and Enhance Recreational Opportunities/ DEIS (due 1/30/2016):** This EIS was prepared by the Alabama Trustee Implementation Group in accordance with the February 16, 2016, decision in *Gulf Restoration Network v. Jewell et al.*, Case 1:15-cv-00191-CB-C (S.D. Ala.). In that decision, the court prohibited the use of \$58.5 million in early restoration funds until additional analysis was completed under NEPA and OPA. This draft RP/EIS fulfills the federal and state natural resources trustees' responsibilities under this court order. It also looks more broadly at the potential to provide restoration for lost recreational use within Alabama by evaluating nine project alternatives that are intended to compensate for a part of Alabama's recreational use injury. Out of those nine projects, the AL TIG proposes moving forward with 6 alternatives totaling \$70,675,000- including \$56,300,000 for the Gulf State Park Lodge- which was litigated. We will be signing the ROD as a NRDA trustee and have been coordinating closely with the AL TIG on several preliminary drafts. We are coordinating with OWOW and R4 to draft a comment letter.

#### **MISCELLANEOUS ITEMS AND UPDATES**

**Professional Technical Writing/Writing for Results:** Researching options and prices for group training.

#### **Meyers Briggs Training and follow up/Group Discussion**

**Coordination with FERC on NEPA Issues:** EPA met with FERC on November 1<sup>st</sup> and will continue discussions as appropriate.

#### **National Historic Preservation Act (NHPA) Compliance:**

BLM EIS for Development near Chaco Canyon (pending)  
NHPA Consultation Section 106 VA, Region 8 (filed EIS)

**On-going tribal consultations regarding the review of Infrastructure Projects:** NEPA has been raised in these discussions as a way to address tribal concerns over large-scale infrastructure projects. A "framing paper" for the consultations speaking both to existing authorities and possible new legislation is being circulated for review and we are coordinating with OITA review the document's language that addresses NEPA.

**EJ Model language and SOPS:** OEJ has no comments on the EJ Model Language OFA developed. A meeting is scheduled 1/26/17 with NCD mgt. to discuss next steps.

**Vision Document:** NCD is working on a vision for the NEPA program.

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